IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 420.

MERLIN W. HIXON, PLAINTIFF IN ERROR,

vs.

LOUIS D. OAKES, DEFENDANT IN ERROR.

BRIEF OF AMICUS CURIAE.

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This brief is filed on behalf of the National Association of Retail Druggists, as amicus curiae.

This association is an incorporated body, organized under the laws of the State of Illinois, represents retail druggists in every state in the union, including California and Los Angeles, and has functioned for more than twenty-five years.

Although the facts are recited in the brief for plaintiff in error, an abstract is here presented.

Merlin W. Hixon, plaintiff in error, qualified under the law of California to practice pharmacy in Los Angeles, and holding a Federal permit to dispense 16 ounces of liquor within 10 days for medicinal purposes upon a physician's prescription, was arrested September 8, 1921, on a charge of having sold upon a physician's prescription intoxicating liquor for medicinal purposes in excess of 8 ounces, in violation of Section 2 and subdivision (c) of Section 5, of Ordinance No.

37,699 (New Series). [Transcript of Record, pp. 14 and 15.]

On June 13, 1922, a petition for discharge of plaintiff in error was filed and a writ of habeas corpus [Rec., p. 44] was issued by the District Court of Appeal of the State of California, directing the Chief of Police, Louis D. Oakes, defendant in error, to produce the body of plaintiff in error before that court on a subsequent date. Plaintiff in error was released on bail and evidence was taken by the District Court of Appeal to determine whether alcoholic liquor was indispensable in the treatment of disease and whether a limitation to 8 ounces in prescribing rendered a prescription valueless.

On February 28, 1923, the District Court of Appeal held that the city of Los Angeles, in the exercise of its police power, delegated to it in its charter by the state, could forbid entirely the sale of intoxicating liquor for medicinal purposes (40 California Appeal Decisions, 521—not California Appeals Reports), [Rec., pp. 95-100]. The writ of habeas corpus was discharged and the plaintiff in error was remanded to the Chief of Police.

It was contended by counsel for respondent, the Chief of Police, that the municipality enjoyed such large police powers that the right of physicians to prescribe liquor for medicinal purposes could be abridged and taken away.

On May 18, 1923, Hon. Frank J. Finlayson, presiding justice of the District Court of Appeal, Second Appellate District, Division 2, allowed a writ of error [Rec., p. 141] to be directed by this court to the District Court of Appeal, in accordance with the statute, requiring said court to certify a record of its proceedings to this court for review and the correction of possible errors.

The questions involved are as follows:

1. The right of a state or municipality, contrary to

the Eighteenth Amendment to the Federal Constitution (Rec., Ex. "B," p. 25), and the National Prohibition Act (41 Stat., 305), the Act supplemental to the National Prohibition Act (42 Stat., 222) and Regulations 60, Bureau of Internal Revenue, Treasury Department, for their enforcement, to prohibit or restrict prescribing and dispensing of medicine by properly licensed persons.

2. The right of a state or municipality to deny citizens of the United States and of the several states medicine containing alcoholic liquor in such quantity and form as qualified physicians may prescribe and qualified pharmacists may compound and dispense in conformity with the organic act and the Federal statutes enacted for its enforcement.

3. The right of a state or municipality to prohibit the manufacture, sale, transportation, importation and exportation of intoxicating liquor for industrial purposes.

ARGUMENT.

The State of California ratified the Eighteenth Amendment to the Federal Constitution. By this act it not only bound itself, but all of its political subdivisions, to abide by its provisions. (Leser *vs.* Garnett, 258 U. S., 130.) As stated by Mr. Justice Brandeis, in delivering the opinion of this court, in Leser *vs.* Garnett (supra), "the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a Federal function, derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a state. Hawke *vs.* Smith, No. 1, 253 U. S., 221; Hawke *vs.* Smith, No. 2, 253 U. S., 231; National Prohibition Cases (Rhode Island *vs.* Palmer, 253 U. S., 350, 386.)"

If the function of a state legislature in ratifying a proposed amendment to the Federal Constitution is a Federal function and transcends any limitations sought to be imposed by the people of a state, by what authority can the city of Los Angeles exceed the limitations of the Eighteenth Amendment to the Federal Constitution? What are these limitations? The limitation of prohibition of the liquor traffic to "beverage purposes." "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited." (Section 1, Eighteenth Amendment to the Constitution of the United States) [Rec., p. 25]. If the word "beverage" is not a word of limitation, why was it included by Congress when the amendment was submitted to the states for ratification? The best evidence of the intent of Congress in drafting the amendment to limit the prohibition of the liquor traffic to "beverage purposes" is to be found in the National Prohibition Act (41 Stat., 305) itself. In its very title will be found the following:

> "An act to prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries."

Further evidence of the intent of Congress to prescribe a limitation on the prohibition of intoxicating liquor to such as is applied to "beverage purposes" is found in Section 4, of Title 2, of the National Prohibition Act, where articles "unfit for use for beverage purposes" are expressly exempted from the provisions

of the act, including medicinal preparations manufactured according the United States Pharmacopoeia and National Formulary formulas, patented, patent and proprietary medicines, toilet, medicinal and anticeptic preparations and solutions and flavoring extracts and syrups.

Additional evidence of the intent of Congress to provide for the nonbeverage use of liquor, as sanctioned by the Eighteenth Amendment, will be found in Section 7, Title, of the National Prohibition Act, providing that no one but a physician holding a permit may prescribe liquor, that it must be prescribed in good faith as a medicine and that "not more than a pint of spirituous liquor to be taken internally shall be prescribed or used by the same person within any period of 10 days and no prescription shall be filled more than once." The power of even Congress to make this limitation upon the right of a physician to prescribe medicine has been denied by Federal Judge Knox in Lambert *vs.* Yellowley, not yet reported [Blakemore on Prohibition, pp. 219-220]. In his opinion Judge Knox said:

> "The Eighteenth Amendment was designed to bring about the prohibition of intoxicating liquor for beverage purposes, and was not, I think, intended to put an end to the use of liquor for purposes regarded by those who proposed the amendment, and by many of the states that ratified it, as justifiable and proper. Instead of manifesting the same solicitude for the physical well-being of a person suffering from disease that it evinced for the spiritual comfort and welfare of certain religious sects, Congress restricted, in the manner complained of, the medicinal use of intoxicating liquors. If the administration to a patient of more than the statutory quantity of liquor is necessary for his relief from a certain known ailment, the inability of

such patient to have his legitimate needs supplied means that he is subjected to a prohibition that certainly is not within the terms of the Eighteenth Amendment, and which it easily may be imagined might subject him to serious consequences if not death itself. It would seem not to be a function of Congress, particularly under the amendment (Eighteenth) to invade, as it were, the domain of medical authority, and to deprive patients of what they need and by every principle of right and justice are entitled to have. Having assumed to do so, it would appear that the act does not constitute legislation appropriate to the object sought to be obtained through the adoption of the amendment. To me it seems reasonably clear that the right of the public to have available for its use an adequate supply of a valuable therapeutic agent transcends the present power of Congress to decree otherwise upon the basis of expediency or policy."

If Congress transcends its power under the Eighteenth Amendment by limiting in the National Prohibition Act the quantity of liquor which may be prescribed for one patient to not more than one pint within 10 days for medicinal purposes (Section 7, Title 2), and further by limiting physicians to not more than 100 prescription blanks for use in any period of 90 days (Section 2, an act supplemental to the National Prohibition Act, 42 Stat., 222), how can the city of Los Angeles, exercising power delegated by the State of California under its charter, further limit the quantity of liquor available for medicinal purposes by limiting a prescription to 8 ounces, prohibiting its refilling, limiting its selling to the date of issuance, and providing that "no other form of prescription" may be lawfully used? [Section 5(c), Rec., p. 15.] If the ordinance of the city of Los Angeles prescribing these limitations

is valid, what becomes of Section 77(c) of Article 13 of Regulations 60, Bureau of Internal Revenue, Treasury Department, for the enforcement of the National Prohibition Act? This Federal regulation provides that "all prescriptions for intoxicating liquor must be made upon Form 1403 and must contain all the data called for by such form, except that in case where a physician holding a permit to prescribe liquor is not in possession of such form, due to any reason justifying such condition, and delay in procuring the same might result in loss of life, aggravation of an ailment, or intense suffering, he may prescribe intoxicating liquor upon a form other than Form 1403: Provided, however, that such form of prescription must contain all the information called for on Form 1403." The Los Angeles ordinance provides that "no other form of prescription shall be deemed to be within the intent of this section." [Rec., p. 15.] The Federal prescription permit thus is made unlawful in Los Angeles. Plaintiff in error has such a permit. He was arrested and convicted for doing what the Federal law and regulation pronounce a lawful act. The conflict between the Los Angeles ordinance and the Federal statute and regulations does not end here. Although "no other form of prescription shall be deemed to be within the intent of this section" (the Los Angeles ordinance), Regulations 60, revised, March, 1924, provides in Section 1412 that "no physician shall issue any prescription for liquor other than on the prescribed Form 1403, and no druggist or pharmacist shall fill any prescription other than on such Form 1403, except that in the case of an epidemic or a sudden and unforeseen accident or calamity a physician holding a permit to prescribe may issue a prescription for intoxicating liquor upon a form other than Form 1403, where failure to issue such prescription might result in loss of life or intense suffering,

but such a prescription shall describe fully the accident, calamity, or circumstances constituting the emergency because of which the unofficial blank is used." It is true that Regulations 60, revised, March, 1924, instruct Federal prohibition directors not to authorize physicians to prescribe intoxicating liquors in violation of state or local laws, but the fact is that plaintiff in error holds a Federal permit under regulations issued for the enforcement of the National Prohibition Act and the Act Supplemental to the National Prohibition Act authorizing him to dispense 16 ounces of intoxicating liquor upon a physician's prescription to a patient for medicinal purposes within 10 days, while the Los Angeles ordinance limits the quantity to 8 ounces and prohibits the use of any but the local form of prescription. If now the Federal Prohibition Department has concluded to avoid conflict with state or local authorities in the enforcement of the National Prohibition Act, by what authority can the Executive Department of the Federal Government authorize a state or city to amend or repeal the Federal statutes and the Federal Constitution?

We now come to the question as to the right of a state or municipality to deny citizens of the United States and of the several states medicine containing alcoholic liquor in such quantity and form as qualified physicians may prescribe and qualified pharmacists may compound and dispense in conformity with the organic act and the Federal statutes enacted for its enforcement. While the act supplemental to the National Prohibition Act was in the form of H. R. 7294 and under consideration in the Committee of the Whole of the Senate, Senator Spencer, of Missouri, asked Senator Sterling of South Dakota, in charge of the bill, the following question:

> "Will the Senator be good enough to tell me how the Committee on the Judiciary of the

> Senate ever felt qualified to substitute their judgment for the judgment of the physician as to the amount of wine that a physician might prescribe for a patient?"
>
> Mr. STERLING: "The Senator might aske the same question with reference to the provisions of the original act, which provides that no more than one pint of spirituous liquors shall be prescribed for use within any period of 10 days. It is deemed as a necessary restriction and safeguard upon the sale of intoxicating liquors. That is the object. It was thought that ought to be ample." (Congressional Record, Vol. 61, Part 4, 67th Congress, 1st Session, pages 3455 and 3456).

At another point in the debate Senator Gerry, of Rhode Island, asked Senator Sterling the following question:

> "Under the second section of this bill, if I understand it correctly, a physician may not prescribe more than one-half pint of alcohol, no matter how seriously ill his patient may be and no matter how absolutely necessary his medical judgment may tell him that this stimulant is. In other words, if a physician believes that he can only save a patient's life, say, in a case of pneumonia, by prescribing an additional amount of alcohol above the one-half pint that the law provides for, he must commit a felony or a misdemeanor. Am I correct in that?"
>
> Mr. STERLING: "I think so. The bill by its terms provides that not more than one-fourth of one gallon of vinous liquor may be prescribed for use by any person within a period of 10 days, or liquors, vinous or spirituous, or both, which contains more than one-half pint of alcohol." (Congressional Record, Vol. 61, Part 4, 67th Congress, 1st Session, pages 3458.)

The late Senator Knox, a constitutional lawyer of recognized distinction, and once Attorney General of

the United States, expressed his positive conviction to the Senate that the Eighteenth Amendment "contained limitations with respect to only one thing, and those limitations were the right to manufacture, sell, or transport intoxicating liquors 'for beverage purposes.'" During the debate on H. R. 7294 (supra) Senator Knox said:

> "When the Eighteenth Amendment was before this body I took the trouble to read it before I voted upon it; and when I read it I found that it contained limitations with respect to only one thing, and those limitations were the right to manufacture, sell, or transport intoxicating liquors 'for beverage purposes.' I was willing, Mr. President, and my vote so indicated, that that question should be submitted to the American people. Had the Eighteenth Amendment placed these limitations upon the use of intoxicating liquor for beverage and medicinal purposes, I would not have voted for the Amendment; and I do not propose by my vote to import into this amendment that which never was dreamed of by its proponents and is not even claimed by the language of the pending bill, because its supporters recognize the therapeutic value of liquors of different character and only seek to put their hands upon the discretion of the medical profession in its prescription. Mr. President, it is not my purpose by my vote to put an insult upon that great and noble profession to which we all must turn at many times in our lives for the protection of our lives; neither do I intend by my vote to put an insult upon my own intelligence by conceding that a constitutional amendment limited to beverage purposes can be stretched in such a way as to place any restriction upon the use of liquor for any other purpose." (Congressional Record, Vol. 61, Part 4, 67th Congress, 1st Session, page 3595.)

The debate in the Senate referred to is illuminating

in another direction. The case depended upon by Presiding Judge Finlayson, of the District Court of Appeal of the 2nd Appellate District of the State of California, in his decision against plaintiff in error, Purity Extract Company *vs.* Lynch, 226 U. S., 192, was used by Senator Walsh, of Montana, in answer to Senator Knox. (Congressional Record, Vol. 61, Part 4, 67th Congress, 1st Session, page 3595.) Senator Walsh quoted from the opinion of this court in that case, as follows:

> "When a state exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition, the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government."

Senator Pomerene, of Ohio, replied:

"Mr. President, the expression of the court is 'it may adopt such measures having reasonable relation.'"

Mr. WALSH, of Montana: "Undoubtedly."

Mr. KNOX: "I entirely agree with what the Senator from Montana says about the decision in that case; but does not the Senator from Montana recognize the distinction between the legislative power to determine what is an intoxicant and the legislative power to expand the purpose for which it shall be used?"

Mr. WALSH, of Montana: "I do not distinguish in that regard. If it may be used for medicinal purposes—as, of course, it may be under the Constitution and the law—and the manufacture and the use of it for medicinal purposes is likely to lead, as it undoubtedly is, to the manufacture

> and sale of it for beverage purposes, it is unquestionably within the power of Congress to regulate the use of it and the manufacture of it for medicinal purposes in order that it shall not be diverted from that use and used for the prohibited purpose."

It will be noted that Senator Walsh, although the first to cite Purity Extract Company *vs.* Lynch (supra) as the highest authority to sustain the pending bill, conceded that intoxicating liquor "may be used for medicinal purposes under the Constitution and the law," contending only that it is "within the power of Congress to regulate the use of it and the manufacture of it for medicinal purposes in order that it shall not be diverted from that use and used for the prohibited purpose." Regulation of a use is one thing and prohibition of a use is quite another. Even Senator Walsh did not go so far as to advocate prohibition of the use of intoxicating liquor for medicinal purposes in order to effectuate the Eighteenth Amendment prohibiting traffic in intoxicating liquor for beverage purposes. It is respectfully submitted, therefore, that the learned Presiding Judge of the District Court of Appeal for the Second Appellate District of the State of California erred when holding that "though alcoholic liquor when used for certain purposes may be beneficial and useful, still its sale even for such beneficial and useful purposes may be prohibited if it can be seen that prohibitory measures of that nature have a real and substantial relation to the suppression of all traffic in intoxicants for beverage purposes." [Rec., p. 98.[Again Senator Walsh stresses the power of Congress to "regulate," but not the power of Congress to prohibit, the manufacture and sale of intoxicating liquors for legitimate purposes to prevent the manufacture and sale for beverage purposes if such reasonable legislation is calculated to effect that end.

During the debate in the Senate referred to (Congressional Record, Vol. 61, Part 4, 67th Congress, 1st Session, page 3595), Senator Walsh said:

> "Accordingly, we must regulate the manufacture and sale of liquor for medicinal purposes, and in doing so beyond question we may prohibit the prescription by the physician of such liquor as in the judgment of the medical profession has no therapeutic value."

The liquor in question was beer. In support of his contention that beer possessed no therapeutic value, Senator Walsh thereupon quoted a resolution adopted by the American Medical Association, declaring that "the use of alcohol as a beverage is detrimental to the human economy and its use in therapeutics as a tonic or a stimulant or as a food has no scientific basis," and that therefore "the use of alcohol as a therapeutic agent should be discouraged." (Congressional Record, Vol. 61, Part 4, 67th Congress, 1st Session, page 3596.) This resolution was quoted in 1921. Since that time a poll of the physicians of the United States taken by the American Medical Association showed that a majority of the physicians of the country recognize the therapeutic value of alcoholic liquor and favor its use for medicinal purposes.

A referendum on the use of alcohol in the practice of medicine was conducted by the American Medical Association and the result will be found in the Journal of the American Medical Association (Vol. 78, 1922, page 210), the question was:

> "Do you regard whiskey as a necessary therapeutic agent in the practice of medicine?"

The total vote in all the states on this question was 30,843; 15,625, or 51 per cent, of the physicians voting, consisting of members of the American Medical Asso-

ciation, answered "yes" and 15,218, or 49 per cent, answered "no." Questionnaires were sent to 53,900 physicians, representing 37 per cent of the physicians of the United States. Of these 31,115, or 58 per cent, were returned.

"Alcohol, when properly used, is a genuine therapeutic agent. If its use in other connections were unknown, it would still be a valuable item of the Pharmacopoeia. Its true utility, however, is liable to be obscured by the unthinking attribution to it of various activities which it does not possess, and by the popular custom of recourse to it in almost every emergency." (Report of the Alcohol Investigating Committee of the British Medical Research Council, published in the Pharmaceutical Journal and Pharmacist, official organ of the Pharmaceutical Society of Great Britain, issue of April 5, 1924, page 354.)

Although there is testimony in this case that there is no standard in the United States Pharmacopoeia for whiskey, and that it was omitted from this official publication as a therapeutic agent [Rec., p. 83], it is evident the witness was not aware that standards for whiskey and brandy as medicine will be included in the new U. S. Pharmacopoeia now in course of revision. Some years ago whiskey was deleted from the Pharmacopoeia, owing to a spirited controversy among physicians over a proper definition. In the Journal of the American Pharmaceutical Association, February, 1924, will be found the following:

> "Announcement has just been made by E. Fullerton Cook, Chairman of the Revision Committee of the United States Pharmacopoeia, that standards for whiskey and brandy as medicine will be included in the new Pharmacopoeia, now being revised. This is in response to a demand by the physicians of the country. Under the national prohibition laws, whiskey and brandy

are classed as medicine and as such are legally prescribed in many cases of serious illness, but at the present time no legal standards exist for their purity. All physicians of the General Revision Committee, acting as a subcommittee, were appointed to study the situation and take the necessary action. This subcommittee has issued the following statement:

> "'In view of the fact that a large number of physicians of the United States believe alcohol to be a valuable therapeutic agent, and in view of the widespread adulteration of the alcoholic liquors at present available, some members of this referee committee feel that for the protection of the public there should be an official standard for medicinal spiritis.'
>
> "By including standards for whiskey and brandy as medicine, in the Pharmacopoeia, which is the legal standard for drugs and medicines under the Food and Drugs Act, the machinery of the U. S. Department of Agriculture and of the boards of health and boards of pharmacy throughout the country is enlisted in protecting the sick against adulterated and poisonous products."

The physicians constituting the General Revision Committee of the U. S. Pharmacopoeia are prominent members of the American Medical Association and reflect its policy. That the attitude of the American Medical Association respecting the therapeutic value of whiskey has changed since the adoption of the resolution referred to during the debate in the Senate in 1921 (supra) can not be denied. If it had not been changed, it is certain that the physicians constituting the General Revision Committee of the United States Pharmacopoeia never would have consented to restore a standard for whiskey in that official publication.

The question arises, what right has a state or municipality to deny citizens of the United States and of the

several states medicine containing alcoholic liquors in such quantity and form as qualified physicians may prescribe and qualified pharmacists may compound and dispense in conformity with the Eighteenth Amendment and the National Prohibition Act and the act supplemental thereto?

We now come to the question as to the right of a state or municipality to prohibit the manufacture, sale, transportation, importation and exportation of intoxicating liquor for industrial purposes. While this question was not directly raised in the case at bar, it is directly involved. If the sale of intoxicating liquors for medicinal purposes may be "absolutely prohibited," because it "opens the door to that train of evils which admittedly follows upon their general use as beverages" [Rec., p. 99], as contended by the learned Presiding Judge of the District Court of Appeal for the Second Appellate District of the State of California, it logically follows that the sale of intoxicating liquor for industrial purposes may be "absolutely prohibited" for the same reason. If it be within the police power of a city, or state, to impose such "absolute prohibition," Title 3 of the National Prohibition Act (41 Stat., 305) may be thereby repealed. Title 3 of the National Prohibition Act governs the manufacture, sale, transportation, exportation and importation of alcohol for industrial purposes. During the late world war the production of nonbeverage alcohol was rated as one of the "key" industries of the nation. This is what a joint select committee of Congress had to say about alcohol as far back as 1897:

> "The uses of alcohol other than as a beverage are more largely and widely extended than is generally supposed. But while the use of alcohol as a beverage is purely voluntary its employment for all other purposes is legitimate, beneficial and necessary. No article entering into manu-

facture or the arts, whether of domestic or foreign production, performs more legitimate or beneficial functions. There is scarcely a manufacturer in the country who does not use alcohol in the production of his goods to a greater or less extent." (Report No. 411, 55th Congress, December 17, 1897.)

In a statement and recommendations prepared for the Bureau of Internal Revenue, Department of the Treasury, by its Alcohol Trades Advisory Committee, October 20, 1923, [Senate Document 44, 68th Congress, 1st Session] (Ex. "A," attached), this statement appears:

"Generally speaking, there can be no great development of chemical industry without alcohol any more than there could be a steel industry without pig iron, an electric industry without copper, or a fertilizer industry without potash and fixed nitrogen. While alcohol may not be used directly in the manufacture of textiles, automobiles and innumerable other ordinary articles of commerce, any chemist could draw a flow sheet to show the relation of alcohol to the units assembled in the fabrication of the finished products. Prior to the passage of the taxfree denatured alcohol act of June 7, 1906, comparatively little alcohol was used for industrial purposes, or in broadgauge scientific research, for the reason that a prohibitory tax was imposed and collected thereon regardless of its nonbeverage utilization. (A tax of approximately $4.18 per liquid gallon still attaches to pure alcohol used in medicines, flavoring extracts, and certain other nonbeverage products, and even to that required for ordinary commercial laboratory purposes.) Despite handicaps, the nonbeverage use of alcohol (pure and denatured) has grown to healthy proportions, as will be shown by the official governmental statistics. Those figures, however, pale into insignificance when compared with the production and use of alcohol for industrial purposes in European

countries. As an illustration, for many years preceding the world war, Germany produced and used, for other than beverage purposes, an average of about 100,000,000 gallons annually. It may be interesting to note the following extract from an article written by the late Commissioner of Internal Revenue, John G. Capers, published in Harper's Weekly, October 3, 1908:

> " 'Industrial alcohol is a matter of nearly as much concern to the German Empire as its army and navy; in fact, the elder Emperor inaugurated the industry for the primary purpose of having a source of light, heat and power within the empire independent of petroleum products, of which Germany has none. That wise old emperor, realizing that some day his empire might be forced, in time of war, to be self-dependent and resourceful within its own borders, determined to be independent of petroleum products, all of which were and still are shipped into Germany from other countries, and an elaborate paternal system was inaugurated, to insure as the Government's ultimate safety source of life, heat and power the alcohol which would be produced from the German potato, now so carefully cultivated for that purpose as it has been for nearly 40 years.'
>
> "While the future uses of alcohol will be coextensive with the progress of chemical industry, there are a few uses the expansion of which will be more or less revolutionary in character, such as in the production of liquid motor fuels to supplement the rapidly diminishing supply of petroleum suitable for the purpose, and other adaptations which are at this time subject to practical experimentation and scientific research. From where is the essential future supply of alcohol for governmental, industrial and scientific purposes to come? Under present conditions of prohibition law enforcement we have real cause to be concerned. Alcohol is a basic chemical required in the production of smokeless

powder, trinitrotoluol, cordite, and like explosives, poison gases, areoplane 'dope' and other war materials, in addition to its essential use in hospital supplies, etc. Moreover, according to many experts of world-wide authority, alcohol, in admixture with other compounds, will furnish the ideal future fuel for aircraft and other internal combustion engines demanded by the Army and Navy; in fact, alcoholic fuels which have met every practical test to which they have been subjected are now being produced and used in the United States. That Congress foresaw the difficulties of chemical research and industrial development under a law prohibiting the manufacture, sale and use of intoxicating liquors for beverage purposes is well demonstrated in the wording of the very title of the National Prohibition Act and in the care taken to prescribe a separate and special title of said act under which the alcohol therein specifically defined was to be thereafter manufactured, transported, sold and used for all nonbeverage purposes. Expressed differently, Congress provided by Title 3 of said act a complete basic code which, if intelligently and justly followed, would have freed industrial alcohol from the absurd distinctions, unwarranted restrictions, and almost intolerable conditions which surround its utilization for nonbeverage purposes under past and current methods of prohibition law enforcement."

The Alcohol Trades Advisory Committee, appointed by the Commissioner of Internal Revenue in respect to the administration of the National Prohibition Act, in 1923, consists of the following: William A. Sailer, Baltimore, Chairman, representing the American Drug Manufacturers' Association; H. E. Howe, Washington, D. C., Secretary, representing the American Chemical Society; W. J. Schiefflin, New York, representing the National Wholesale Druggists' Association; Samuel C. Henry, Chicago, President, National Drug Trade

Conference, representing the National Association of Retail Druggists; Prof. J. H. Beal, Urbana, Ill., Chairman, Board of Trustees, U. S. Pharmacopoeia, Emeritus Professor of Pharmacy, University of Pittsburgh, representing the American Pharmaceutical Association and Faculties of Pharmaceutical Colleges; Martin H. Ittner, Jersey City, Chief Chemist, Colgate & Company, Jersey City, representing the American Manufacturers of Toilet Articles; Frank A. Blair, New York, representing the Proprietary Association; M. C. Whitaker, New York, President, U. S. Industrial Chemical Company, New York, Perkin Medalist, 1922; R. H. Bond, Baltimore, representing the Flavoring Extract Manufacturers' Association of the United States; Dr. Charles L. Reese, Wilmington, Del., Chemical Director, E. I. du Pont de Nemours & Company, representing the Manufacturing Chemists' Association, and R. M. Cain, Indianapolis, representing the American Pharmaceutical Manufacturers' Association.

Can it seriously be contended that "absolute prohibition" of the manufacture, sale, transportation, exportation and importation of alcohol within the definition of "intoxicating liquor" in the National Prohibition Act, Sec. 1, Title 2) for industrial purposes would be a valid exercise of the police powers of a city, or state, or even Congress, under the Eighteenth Amendment, because it bears a "reasonable relation" to the enforcement of the prohibition of intoxicating liquors for beverage purposes? Would it be "reasonable" to suppress the means of national defense to insure the prohibition of traffic in intoxicating liquors for beverage purposes? Would it be "reasonable" to suppress the manufacture of the more than 5,000 different articles in which alcohol enters as an indispensable manufacturing ingredient, all of such articles "unfit for use for beverage purposes," to effectuate the prohibition

of intoxicating liquors for beverage purposes? Would it be "reasonable" to destroy the means of saving human life during epidemics of pneumonia, influenza, diphtheria, and in cases of old age where weakness of the heart action arises, to insure the prohibition of intoxicating liquors for beverage purposes? "There are limits beyond which Congress can not go in treating beverages as within its power of enforcement," declared Mr. Justice McKenna in his dissenting opinion in the case of Rhode Island *vs.* Palmer (253 U. S., 405), and "those limits are not transcended by the provisions of the Volstead Act." This language was quoted as one of the conclusions of this court. Mr. Justice McKenna added: "Of course, necessarily, the same limitations apply to the power of the states as well. From these premises the deduction seems inevitable that there must be united action between the states and Congress, or, at any rate, concordant and harmonious action."

Whatever the relation between the states and the Federal Government in the enforcement of the National Prohibition Act, the Federal statute for the administration of the Eighteenth Amendment, and the statutes of the several states enacted for that purpose, it is respectfully submitted that both the Federal and state governments, and lesser political subdivisions, sustain a far different relation to so-called "prohibition" under the Eighteenth Amendment than they did prior to the adoption of the Eighteenth Amendment. This court may well have held as it did in Purity Extract and Tonic Company *vs.* Lynch (supra) in the year 1912, when there was no limitation in the Constitution of the United States of the prohibition of intoxicating liquors to "beverage purposes," and when all of the police powers of the states were reserved to the states because not especially granted to the Federal Govern-

ment, so far as the prohibition of the liquor traffic was concerned. With the adoption of the Eighteenth Amendment, however, expressly limiting prohibition of the manufacture, sale, transportation, exportation and importation of intoxicating liquors to "beverage purposes," it no longer can be maintained that cities, or states, or even Congress can impose "absolute prohibition" on the manufacture, sale, transporation, exportation and importation of intoxicating liquors. This court itself has said, in Rhode Island *vs.* Palmer (supra), "that part of the prohibition amendment to the Federal Constitution which embodies the prohibition is operative throughout the entire territory limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress, by a state legislature, or by a territorial assembly, which authorizes or sanctions what the amendment prohibits." What the Eighteenth Amendment does not expressly prohibit, it impliedly permits. The permissive provisions of the National Prohibition Act, to be found in Titles 2 and 3, are the best evidence of this. If the Eighteenth Amendment, of its own force, invalidates every legislative act which sanctions what the amendment prohibits, does it not logically follow that the Eighteenth Amendment invalidates every legislative act, whether by Congress, by a state legislature, or a territorial assembly, which prohibits what the amendment sanctions?

The National Association of Retail Druggists is also in entire accord with still another conclusion of this court in Rhode Island *vs.* Palmer (supra), as follows:

> "The power confided to Congress by the provisions of the Eighteenth Amendment to the Federal Constitution, that 'the Congress and the several states shall have concurrent power

> to enforce this article by appropriate legislation,' while not exclusive, is territorially co-extensive with the prohibition of that amendment, embraces manufacture and other intrastate transactions as well as importation, exportation, and interstate traffic, and is in nowise dependent on or affected by action or inaction on the part of the several states or any of them."

Of equal force in sustaining the power of Congress to enact the permissive as well as the prohibitory provisions of the National Prohibition Act and the act supplemental thereto (supra) may be cited the conclusion of this court in Rhode Island *vs.* Palmer (supra), under paragraph 8 of the syllabus, as follows:

> "The words 'concurrent power' in the declaration of the Eighteenth Amendment to the Federal Constitution that 'the Congress and the several states shall have concurrent power to enforce this article by appropriate legislation' do not mean joint power, or require that legislation thereunder by Congress, to be effective, shall be approved or sanctioned by the several states or any of them, nor do they mean that the power to enforce is divided between Congress and the several states along the lines which separate or distinguish foreign or interstate commerce from intrastate affairs."

Although it is conceded that a state may exceed the Federal Government in its regulation of the manufacture, sale, transportation, exportation and importation of intoxicating liquor for beverage purposes, it is respectfully suggested that the express limitations of the Eighteenth Amendment to the Federal Constitution are binding on the states and the Federal Government with equal force. What limitations are to be found in the Eighteenth Amendment in addition to the limitation provided by the word "beverage"? The "con-

current power" granted to Congress and the several states in the declaration of the Eighteenth Amendment is first limited to the "enforcement of this article" of the Federal Constitution. The next express limitation provided in the Eighteenth Amendment is that "the concurrent power to enforce this article" shall be by "appropriate legislation." Does the word "beverage" in "this article" of the Federal Constitution mean, or can it mean, "medicinal" as applied to "purposes"? When as a beverage been considered a medicine? Certainly the definition of "intoxicating liquor" in the National Prohibition Act (supra) makes a distinction between a beverage and "intoxicating liquor," the Congress having declared that its definition of "intoxicating liquor" "shall not extend to any beverage or liquid if it contains less than one-half of one per centum of alcohol by volume." (Section 1, Title 2, National Prohibition Act.) This is what Congress declares is the distinction between "beverage" and nonbeverage purposes for which intoxicating liquor may be used. Congress must have felt obligated to duly regard the express limitation provided in the Eighteenth Amendment in the word "beverage" qualifying "purposes." Otherwise it would not have provided this definition of "intoxicating liquor." It is respectfully suggested that if the Congress concluded there were limitations beyond which it could not go in prohibiting intoxicating liquor for beverage purposes, there must be some limitation on the police powers of a state or city in effectuating the Eighteenth Amendment. "Absolute prohibition" "for certain purposes," even though "beneficial and useful," decreed as within the police power of a state or city by the District Court of Appeal for the Second Appellate District for the State of California [Rec., p. 98], constitutes nothing short of an amendment to the Eighteenth Amendment of the Federal Constitution.

This amendment in the case at bar amends Section 1 of the Eighteenth Amendment by inserting after the word "beverage" the words "medicinal and industrial," so that it will read as follows:

> "Eighteenth Amendment—Sec. 1.—After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States, and all territory subject to the jurisdiction thereof for beverage, medicinal and industrial purposes is hereby prohibited."

The exercise by a state or city of its police power to impose "absolute prohibition" of the manufacture, sale, transportation, exportation and importation of intoxicating liquor would necessarily have the effect of repealing Section 3, of Title 2, of the National Prohibition Act, providing that "liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the Commissioner may, upon application, issue permits therefor, etc." (The National Prohibition Act, 41 Stat., 305.) The imposition of "absolute prohibition" would also repeal Section 4, of Title 2, of the National Prohibition Act. Section 4 provides that "the articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this act if they correspond with the following descriptions and limitations, etc." Denatured alcohol or denatured rum, medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary or the American Institute of Homeopathy unfit for use for beverage purposes, patented, patent and proprietary

medicines that are unfit for use for beverage purposes, toilet, medicinal and antiseptic preparations and solutions that are unfit for use for beverage purposes, and flavoring extracts and syrups that are unfit for use as a beverage, or for intoxicating beverage purposes, as well as vinegar and preserved sweet cider are enumerated in Section 4 immediately following the language "if they correspond with the following descriptions and limitations." "Absolute prohibition" would necessarily repeal Title 3 of the National Prohibition Act, governing the manufacture, sale, transportation, exportation and importation of alcohol for industrial purposes. In short, there would be nothing left of the National Prohibition Act and the act supplemental thereto except the prohibitory provisions if "absolute prohibition" were imposed by a state or city in the exercise of its police power in the enforcement of the Eighteenth Amendment of the Federal Constitution. More than this, the permissive provisions of Regulations 60, for the enforcement of Title 2 of the National Prohibition Act, and the permissive provisions of Regulations 61, for the enforcement of Title 3, of the National Prohibition Act, would be repealed if a state or city exercised the power to impose "absolute prohibition" of "intoxicating liquors," as defined in the National Prohibition Act.

It is further respectfully suggested that legal obligations have been imposed upon the registered pharmacists of the United States, as well as upon the qualified physicians, to dispense and prescribe, respectively, intoxicating liquor for medicinal purposes, in the quantity and manner provided in the National Prohibition Act, the act supplemental thereto, and the regulations for their enforcement. How may these legal obligations to the public be discharged by registered pharmacists and qualified physicians if a state or city in the exercise of its police power imposes "absolute pro-

hibition" on the sale of alcoholic liquor for medicinal purposes? How may the citizens of the United States and of the several states obtain alcoholic liquor for medicinal and industrial purposes, as sanctioned by the Eighteenth Amendment to the Federal Constitution, the National Prohibition and the act supplemental thereto, if a state or city exercises its police power to impose "absolute prohibition" of the manufacture, sale, transportation, exportation, or importation of intoxicating liquors? Can it reasonably be contended that the imposition of "absolute prohibition" by a state, or city, or even Congress, constitutes "appropriate legislation" to enforce the Eighteenth Amendment to the Federal Constitution, as provided in the amendment itself?

E. C. BROKMEYER,
General Attorney,
National Association of Retail Druggists.

68TH CONGRESS
1st Session

SENATE

DOCUMENT
No. 44

STATEMENT AND RECOMMENDATIONS

PREPARED FOR THE

BUREAU OF INTERNAL REVENUE DEPARTMENT OF THE TREASURY

BY ITS

ALCOHOL TRADES ADVISORY COMMITTEE

APPOINTED BY THE COMMISSIONER OF INTERNAL REVENUE IN RESPECT TO THE ADMINISTRATION OF THE NATIONAL PROHIBITION ACT

PRESENTED BY MR. BAYARD

FEBRUARY 13, 1924.—Ordered to be printed with an illustration

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STATEMENT AND RECOMMENDATIONS OF THE ALCOHOL TRADES ADVISORY COMMITTEE.

The alcohol trades advisory committee, appointed April 27, 1923, by the Commissioner of Internal Revenue in respect to the administration of the national prohibition act, with particular reference to the manufacture, transportation, sale, and use thereunder of alcohol for other than beverage purposes, respectfully submits these views and recommendations.

The following statement made in its official report by a joint select committee of Congress is fully as true now as the day it was written—over 25 years ago—particularly when it is considered that in the World War the production of nonbeverage alcohol was rated as one of the "key" industries of the Nation:

> The uses of alcohol other than as a beverage are more largely and widely extended than is generally supposed. But while the use of alcohol as a beverage is purely voluntary its employment for all other purposes is legitimate, beneficial, and necessary. No article entering into manufacture or the arts, whether of domestic or foreign production, performs more legitimate or beneficial functions. There is scarcely a manufacturer in the country who does not use alcohol in the production of his goods to a greater or less extent. (Rept. No. 411, 55th Cong., Dec. 17, 1897.)

The alcohol referred to by that committee is ethyl alcohol—unquestionably the most important of all the alcohols which have been of industrial and scientific utilization; in fact, it is considered in those respects to be second only to water. Generally speaking, there can be no great development of chemical industry without alcohol any more than there could be a steel industry without pig iron, an electric industry without copper, or a fertilizer industry without potash and fixed nitrogen. While alcohol may not be used directly in the manufacture of textiles, automobiles, and innumerable other ordinary articles of commerce, any chemist could draw a flow sheet to show the relation of alcohol to the units assembled in the fabrication of the finished products.

Prior to the passage of the tax-free denatured alcohol act of June 7, 1906, comparatively little alcohol was used for industrial purposes, or in broad-gauge scientific research, for the reason that a prohibitory tax was imposed and collected thereon regardless of its nonbeverage utilization. (A tax of approximately $4.18 per liquid gallon still attaches to pure alcohol used in medicines, flavoring extracts, and certain other nonbeverage products, and even to that required for ordinary commercial laboratory purposes.) Despite handicaps, the nonbeverage use of alcohol—pure and denatured—has grown to healthy proportions, as will be shown by the official governmental statistics. Those figures, however, pale into insignificance when compared with the production and use of alcohol for industrial purposes in European countries. As an illustration, for many years preceding

the World War Germany produced and used, for other than beverage purposes, an average of about 100,000,000 gallons annually. In connection with the development of industrial alcohol in Germany, it may be interesting, at least from a historical standpoint, to note the following extract from an article written upon his return from that country, by the late Commissioner of Internal Revenue, John G. Capers, published in Harper's Weekly, October 3, 1908:

> Industrial alcohol is a matter of nearly as much concern to the German Empire as its army and navy; in fact, the elder Emperor inaugurated the industry for the primary purpose of having a source of light, heat, and power within the Empire independent of petroleum products, of which Germany has none. That wise old Emperor, realizing that some day his empire might be forced, in time of war, to be self-dependent and resourceful within its own borders, determined to be independent of petroleum products, all of which were and still are shipped into Germany from other countries, and an elaborate paternal system was inaugurated, to insure as the Government's ultimate safety source of light, heat, and power the alcohol which would be produced from the German potato, now so carefully cultivated for that purpose, as it has been for nearly 40 years.

While the future uses of alcohol will be coextensive with the progress of chemical industry, there are a few uses the expansion of which will be more or less revolutionary in character, such as in the perfection of liquid motor fuels to supplement the rapidly diminishing supply of petroleum suitable for the purpose, and other adaptations which are at this time the subject of practical experimentation and scientific research.

From where is the essential future supply of alcohol for governmental, industrial, and scientific purposes to come? Under present conditions of prohibition law enforcement we have real cause to be concerned.

Alcohol is a basic chemical required in the production of smokeless powder, trinitrotoluol, cordite, and like explosives, poison gases, airplane "dope," and other war materials, in addition to its essential use in hospital supplies, etc. Moreover, according to many experts of world-wide authority, alcohol, in admixture with other compounds, will furnish the ideal future fuel for aircraft and other internal-combustion engines demanded by the Army and Navy; in fact, alcoholic fuels which have met every practical test to which they have been subjected are now being produced and used in the United States. Such alcoholic fuels do not require a specially designed engine, the standard motors and accessories being used with excellent results. Some of the advantages of such alcoholic fuels over gasoline may be summarized—more complete combustion, no preignition, no knocking, more uniform application of power, better control, and greater mileage.

The maximum capacities of all existing alcohol plants are now approximately one-half of what were available at the termination of the World War—and they were then deemed inadequate to meet the demand for munitions alone. How does this condition of affairs fit in with the program of national preparedness? The Washington Post of Wednesday, October 10, 1923, contained the following pertinent editorial:

> INDUSTRIAL PREPAREDNESS.
>
> The War Department's effort to work out a plan for the cooperation of industry with the armed forces with the greatest possible speed and effectiveness in time of war is along a line of preparedness that must be followed if America's defense

is to meet the demands of national safety. The Nation's experience in the World War proved the costliness of the lack of such a cooperative plan That it may profit by the lesson then learned, by safeguarding itself against repetition of the confusing and impeding conditions that marked the mobilization of industrial resources for military use in that conflict, is the purpose of the War Department's plan.

That Congress foresaw the difficulties of chemical research and industrial development under a law prohibiting the manufacture, sale, and use of intoxicating liquors for beverage purposes, is well demonstrated in the wording of the very title of the national prohibition act and in the care taken to prescribe a separate and special title of said act, under which the alcohol therein specifically defined was to be thereafter manufactured, transported, sold, and used for all nonbeverage purposes. Expressed differently, Congress provided, by Title III of said act, a complete basic code which, if intelligently and justly followed, would have freed industrial alcohol from the absurd distinctions, unwarranted restrictions, and almost intolerable conditions which surround its utilization for nonbeverage purposes under past and current methods of prohibition-law enforcement. The congressional mandate in that behalf is well stated in section 13 of that title, viz:

SEC. 13. The commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

How has the national prohibition act been administered with respect to industrial alcohol?

Spelling out authority for his action (apparently under the provisions of sec. 38, Title II, of said act), a former commissioner of internal revenue created the office of Federal prohibition commissioner, the incumbents of which have been clothed with full authority to enforce both the prohibitory and permissive features of the law. Such prohibition commissioners have sought to accomplish that task through a specially organized staff of prohibition enforcement officers, under a complicated system of regulations incorporated in what are known as Regulations 60 and Regulations 61. Not only was no provision made for a properly trained industrial alcohol administrator to enforce apart from but in cooperation with a prohibition officer, the provisions of Title III concerning alcohol lawfully manufactured and withdrawn for scientific research and industrial purposes, but in the preparation of such regulations a remarkable distinction was made between tax-paid alcohol, on the one hand, and tax-free and denatured alcohol, on the other, although in practical effect all such alcohol was intended for scientific, industrial, governmental, and other nonbeverage purposes.

As an illustration, tax-paid alcohol required for medicines, flavoring extracts, and certain other nonbeverage commodities was placed under Regulations 60 in the same category with whisky and other potable liquors, and could only be procured by permittees after vexatious and costly delays, through inexperienced "prohibition

directors;" while tax-free ethyl alcohol and denatured alcohol only were placed under Regulations 61 and were obtainable by permittees through collectors of internal revenue, the extensive experience of whose officers in connection with governmental control of distilled spirits equipped them intelligently and promptly to meet the requirements of legitimate trade. The fundamental error in making such an invidious distinction in regulations between alcohols intended for lawful purposes, instead of having the manufacture, transportation, sale, and use of all such alcohol administered under Title III of the law and Regulations 61, in logical furtherance of the intent of Congress, is largely responsible for the opposition of legitimate industry to the present method of prohibition law enforcement, which makes a police officer the source of supply of essential raw material, or any other scheme by which a prohibition commissioner shall say how, when, from whom, and in what quantities alcohol shall be secured for lawful purposes.

In our opinion, the fault does not lie with the law, but in the administration thereof. We yield to no one in our adherence to the principle of law enforcement, but surely the national prohibition act can be so administered as not to interfere with the health, economic needs, and the national defense of the country, although this is apparently challenged by some "dry" advocates. For instance, Mr. Wayne B. Wheeler, general counsel of the Anti-Saloon League of America, before the Committee on the Judiciary of the House of Representatives, on Friday, May 20, 1921, made the following remarkable statement:

> If it comes to the point where it must be a choice between medicaments for medical preparations and the enforcement of the law, I think we must choose law enforcement.

In placing the administration of the legitimate use of alcohol in the hands of a prohibition commissioner without suitable technical knowledge, training, nor experience, and perchance being out of sympathy with that phase of the law, the Government disregarded the lawful status of the chemical, alcohol, and it is therefore not surprising that such prohibition commissioner and his forces acted as they did and are doing, because they do not understand the relationship of alcohol to the defense, health, and general welfare of the Nation and to the progress of science. Some fanatics have, in fact, seriously proposed as the best method of enforcing the eighteenth amendment to the Constitution to prohibit altogether the manufacture of alcohol, while others advocate the use of a "substitute," when, notwithstanding long-continued, serious research, there is no substance known to science or industry which can possibly take the place of alcohol. No rational person would seriously contend that a chemist or merchant would go through the humiliating, tedious, and costly experience of obtaining and using alcohol and be treated as a suspicious character if he could possibly get along without it.

The one redeeming feature which science and industry find in the present method of administering the legitimate manufacture and use of alcohol through a prohibition commissioner is the right of appeal to the Commissioner of Internal Revenue and the Secretary of the Treasury. This was emphatically demonstrated at a hearing before the Committee on the Judiciary of the House of Representatives on

February 19, 1923, on the so-called Ernst-Wood bill (H. R. 12035; S. 3713). That measure sought to create a separate bureau of government, under a "commissioner of prohibition," who would be independent of the time-honored departmental control and answerable for his acts solely to the President, and to confer upon that official autocratic powers to enforce the entire group of laws—punitive and taxing—having to do with the manufacture, sale, and use of intoxicating liquors (in which high-proof alcohol has been included), narcotic drugs, etc. Among those who appeared in opposition to and filed written protests against the bill may be mentioned the American Chemical Society, composed of approximately 15,000 highly trained chemists, all of whom have had ample opportunity to judge of the prohibition commissioner's work as applied to legitimate industry; National Drug Trade Conference, Manufacturing Chemists' Association, American Drug Manufacturers Association, Flavoring Extract Manufacturers' Association, National Wholesale Druggists' Association, National Association of Retail Druggists, American Pharmaceutical Association, the Proprietary Association, American Manufacturers of Toilet Articles, Faculties of Pharmaceutical Colleges, and others interested in science and legitimate industry.

It will be readily appreciated that the protestants against the Ernst-Wood bill represented investments of many millions of dollars and vast numbers employed in their respective fields. The committee failed even to report such bill and it died with the Sixty-seventh Congress.

Resort is now being had to propaganda seeking to place upon the Secretary of the Treasury and the Commissioner of Internal Revenue responsibility for alleged failure properly to enforce the provisions of the national prohibition act, and which apparently has for its ultimate object a further appeal to Congress for the enactment of a law embodying the principle of the Ernst-Wood bill. We unhesitatingly characterize these attacks upon the Secretary of the Treasury and the Commissioner of Internal Revenue as being as unfair as unwarranted, both of those officials having but properly and justly exercised their statutory right of review. Time after time, upon appeals of science and industry, they promptly accorded relief from intolerable conditions.

The attitude of a prohibition commissioner toward science and industry is sufficiently shown by an official bulletin issued on October 28, 1922, in which he stated that—

> Effectiveness of enforcement is shown by results in curtailing the source of supply of whisky for medicinal use and grain alcohol for industrial and drug purposes, such curtailment being reflected in the reduction of tax-paid withdrawals of alcohol as measured in tax gallons.

This statement was reprinted in newspapers throughout the country and undoubtedly created great prejudice in the public mind against the alcohol using industries.

The alcohol trades advisory committee condemns, as a pernicious handicap to scientific research and lawful industry and contrary to long-established practice under our system of government, any such proposal as that contemplated by the Ernst-Wood bill; and the proponents of such a bureaucracy may be assured that it will be opposed with every ounce of energy that can be put forward by those engaged

in lawful professions and businesses in which the chemical, alcohol, is required and used.

In view of the facts and conditions, we respectfully submit the following recommendations:

I. As alcohol is admittedly a basic chemical essential to our national defense, industrial and economic development, and even to the advancement of civilization itself, all who believe in true law enforcement should recognize the insufferable situation to which chemical industry has been brought by failure heretofore properly to enforce the industrial alcohol features of the national prohibition act, and should make certain that it is administered as intended by Congress.

II. The alcohol trades advisory committee believes that the action of a former Commissioner of Internal Revenue in vesting in a Federal prohibition commissioner, not equipped with the essential technical and economic knowledge and training, the duties of carrying out the provisions of the national prohibition act, concerning the manufacture, transportation, sale, and use of industrial alcohol, was illegal by implication, illogical by any method of sound reasoning, economically impracticable, and should be forthwith corrected.

The Commissioner of Internal Revenue should designate a Deputy Commissioner of Internal Revenue, or appoint an industrial alcohol commissioner, to take over the administration of that portion of the law relating to the manufacture, sale, and use of high proof alcohol, pure and denatured, for nonbeverage purposes. Collectors of internal revenue and civil service revenue officers should be selected to assist him, as is customary in the enforcement of other internal revenue statutes. It follows that such deputy or industrial alcohol commissioner should possess suitable technical knowledge, training, and experience. It should be his duty to issue permits to manufacture, withdraw, and use industrial alcohol of any kind, a copy of each permit at the time of issuance to be delivered to the prohibition commissioner so that he might police operations. In this way, efficient and scientific administration would be assured and at the same time the prohibition commissioner would be relieved from routine work incidental to serving legitimate industry, and could devote the necessary time to his logical duty of enforcing the prohibitory features of the law. Furthermore, the two agencies, coordinating, would be a check upon each other. It would not require any change whatsoever in the law, but merely a revision of Regulations 60 and 61, to carry this recommendation into effect.

III. If agreeable to the Commissioner of Internal Revenue, this alcohol trades advisory committee will act in an advisory capacity for the purpose of assisting such Deputy Commissioner of Internal Revenue or industrial alcohol commissioner in investigating applications for permits and furthering the uses of alcohol in scientific research and lawful industry.

Respectfully submitted.

ALCOHOL TRADES ADVISORY COMMITTEE.
By WM. A. SAILER, *Chairman.*
H. E. HOWE, *Secretary.*

APPENDIX.

ALCOHOL TRADE ADVISORY COMMITTEE.

Appointed by the Commissioner of Internal Revenue in respect to the administration of the national prohibition act:

William A. Sailer, Baltimore, Md., chairman; secretary and general manager, Sharp & Dohme, Baltimore, Md.; representing American Drug Manufacturers' Association.

H. E. Howe, Washington, D. C., secretary; editor, Industrial and Engineering Chemistry; representing American Chemical Society.

W. J. Schieffelin, New York, N. Y.; president, Schieffelin & Co., New York, N. Y.; representing National Wholesale Druggists' Association.

Samuel C. Henry, Chicago, Ill.; president, National Drug Trade Conference; representing National Association of Retail Druggists.

J. H. Beal, Urbana, Ill.; chairman of board of trustees, U. S. Pharmacopeia; emeritus professor of pharmacy, University of Pittsburgh; representing American Pharmaceutical Association and Faculties of Pharmaceutical Colleges.

Martin H. Ittner, Jersey City, N. J.; chief chemist, Colgate & Co., Jersey City, N. J.; representing American Manufacturers of Toilet Articles.

Frank A. Blair, New York, N. Y.; vice president, The Centaur Co., New York, N. Y.; representing The Proprietary Association.

M. C. Whitaker, New York, N. Y.; president, U. S. Industrial Chemical Co., New York, N. Y.; Perkin Medalist, 1922.

R. H. Bond, Baltimore, Md.; vice president and general manager, McCormick & Co., Baltimore, Md.; representing Flavoring Extract Manufacturers' Association.

Charles L. Reese, Wilmington, Del.; chemical director, E. I. du Pont de Nemours & Co., Wilmington, Del.; representing Manufacturing Chemists' Association.

R. M. Cain, Indianapolis, Ind.; president and general manager, Swan-Myers Co., Indianapolis, Ind.; representing American Pharmaceutical Manufacturers' Association.

H. S. Chatfield, New York, N. Y.; vice president, Kasebier-Chatfield Shellac Co., New York, N. Y.; representing the National Paint, Oil, and Varnish Association.

LAWFUL USES OF ALCOHOL.

Aside from the ordinary uses of pure alcohol for Governmental, medicinal, scientific, and industrial purposes, the Government has prescribed formulæ of denatured alcohol and issued permits for the use thereof in the manufacture of the following articles:

Acetaldehyde; acetanilide; acetic ether; acetphenetidin; aconite; adeps lanæ; aletrin; alkaloids and alkaloid salts (39–A); aloin; ammunition; antipyrine; apocynin; arbutin; artificial flowers and feathers; asclepiadin; aspirin; atophan; avenin; analytical work; arabinose.

Barometer and thermometer tubes; benzaldehyde; benzidine; benzoic acid; benzon; benzyl cyanide; betanaphthol; beta-naphthol benzoate; beta-naphthol salicylate; composition billiard and pocket balls; bottle caps; brushes; benzoin; benzol; camphor synthetic; cements; chelonin; chloral hydrate; chloroform; cimicifugin; cocoa butter; collodion; collodion corn remedy; coros and bronze powders; compasses; concentrations (non-liquid); coumarin; creosote carbonate; cutlery; caustic potash; confectioners' colors; dandelion.

Dental alloy; diethylaniline; digestive ferments; digitalis; dimethylglyoxime; dinitrotoluene; disinfectant germicide; door checks; dyestuffs; dextrin; dextrose; embalming fluid; enamel; eosine; essential oil orris; ether; ethyl acetate; ethyl aniline; ethyl bromide; ethyl butyrate; ethyl chloride; ethyl propionate; extracting glycerin from distillery slop; fertilizers; filaments for incandescent lamps; formaldazone; formaldehyde; fireworks; fulminate of mercury; gaduol; gallocyanine; gas mantles; gentian (solid extract); glycerophosphates; guaiacol; guaiacol carbonate; gelatin capsules; gum and pyroxlin solutions; galactose.

Glass; glass enamel; hats; heliotropin; hexachlorobenzol; hydrastis (alkaloid of); imitation ivory goods; imitation leather; ink; inulin; iriscin; isinglass; insecticides; jalapin (non-liquid concentrations of); japans; jewelry; lacquers, pastes, and varnishes from soluble cotton; leather goods finish; leather substitutes; liquor cresolis compound; levulose; lysol; mandrake (powdered and solid extract of); mica insulators; mirrors; moldings and picture frames; monobromated camphor; moth repellant.

Motor fuel; mucilage; maltose; mannose; mannite; metol; melibiose; paste; glue; nitrocellulose (solution and solvent of); nitroso-beta-naphthol; non-scattterable glass; oils, greases, lubricants, and soluble thread-cutting oils; oleoresins; orthotoluolsulfamid; optical goods; paints; paraffin; pepsin and similar products; phenolphthalein; phenyl-cinchoninic acid; photographic engravings; photographic dry plates; photographic films; phytolacin (concentration of); podophyllin resin and similar products; polish preparations for metals and furniture; postal card colors; potassium hydroxide; powdered drugs and extracts.

Print paper and enlargements; pyroxylin cements; paramidophenol; pencils; paper; plumbing material; potassium cyanate; refining mineral oils; refining precious metals; resin of scammony; resorcin; raffinose; resins; rhamnose; saccharin, salicylic acid; salicylic aldehyde; salol; salophen; santonin and strychnine; saponin; shampoo jelly; shampoo liquid; shellac thinner.

Shellac varnish; shoe polish; silk fabrics; silverware and bronze; smokeless powder; soap liquid; soap transparent; sodium benzoate; soldering flux; solid extracts; solidified alcohol; stains; stencil paper; sterilizing solution for corks; sulphonic acid; surgical ligatures; synthetic mustard oil; saccharose; sorbit; solution and solvent of nitrocellulose; stanolind; synthetic perfume bases; tannic acid; terpine hydrate; textile cleansing soap; theobromine; thermostatic devices; tinfoil; toludin; transparent paper.

Transparent soap for waterproofing cement; trinitrotoluol; tobacco; trehalose; trioxyaline; uric acid; varnish remover; viburnum (concentration); vegetable colors; washing lenses; water colors; watches; wood filler; wood finish; wool fat; waterproof fiber signs; xylose.

Celluloid, pyralin, and similar products; nitrocellulose lacquer; cement products.

Arsphenamine; beta-naphtha centrallites; diethyl barbituric acid (barbital); diamidophenol; diethylphthalate; dimethylsulphate; ethyl esters of cinnamic, lauric, benzoic, and pelargonic acids; ethyl palmitate; ethyl sulphate (for use in manufacture of acetphenetidin); hydroquinone; ketone Michelers.

Lacquers; laboratory experiments; metol; neoarsphenamine; nitrous ether; phenacetin; paramidophenol; phenylacetic acid; picric acid testfor United States Government; powdered chemicals; synthetic camphor; viscaloid; white petroleum oils; ethyl sulphate.

Cutting oils; shampoo; deodorants; experimental purposes; disinfectants; furniture polish; films; gradometers; photographic emulsions; solution of aniline dyes for industrial purposes (except certified food colors); esters.

Liquid soap; smelling salts; toilet preparations.

Cigars and cigarettes.

Fungicides, insecticides, and substances of a similar nature.

Photo enlargements; photo prints; photo-engraving; photographic collodion.

Dichlorethane; parafulminate of mercury; paraphenetidin; hydroquinone.

Fine chemicals; sulphonmethane.

Purification of rubber; santonine.

Hydrosulphate; sodium.

Soluble cotton.

Hydrazoanisol; milk protein; paranitrophenatol; refining potassium and sodium hydrate; saponification of the waxes of acid-fast bacteria; ethyl ester; dye intermediates; imitation rubber; lacquer solutions; urea; anhydrous soap; sutures and ligatures; tubes (collapsible); sanatogen; citronellol; geraniol.

Celery oil; certified food colors; chemical preparations; dry extracts for food products; ethereal oil; neosalvarsan; protargentum, sodium ethyl sulphate; sulphuric ether; salvarson.

Nitrous ether; pure acetic ether.

Adalin; by-products from distillery slop; lacquers for food containers; ammonium; benzonaphthol; codeine; diacetylmorphine; ethyl morphine; homatropin; morphine salicylate; cocaine; strontium; sajodin; veronal.

Ethylene gas.

Acetate of lime; acetone; vinegar.

Artificial silk; backing of films; iodizers; photo films.

Preserving formaldehyde, U. S. P.

Liniments and lotions, for external use only.

Solid and powdered extracts.

Phenacetin; ethyl valerate.

Tincture of iodine, U. S. P.; tr. iodi Fortier, N. F.; tr. iodine Churchill's; tr. iodine 3½ per cent.

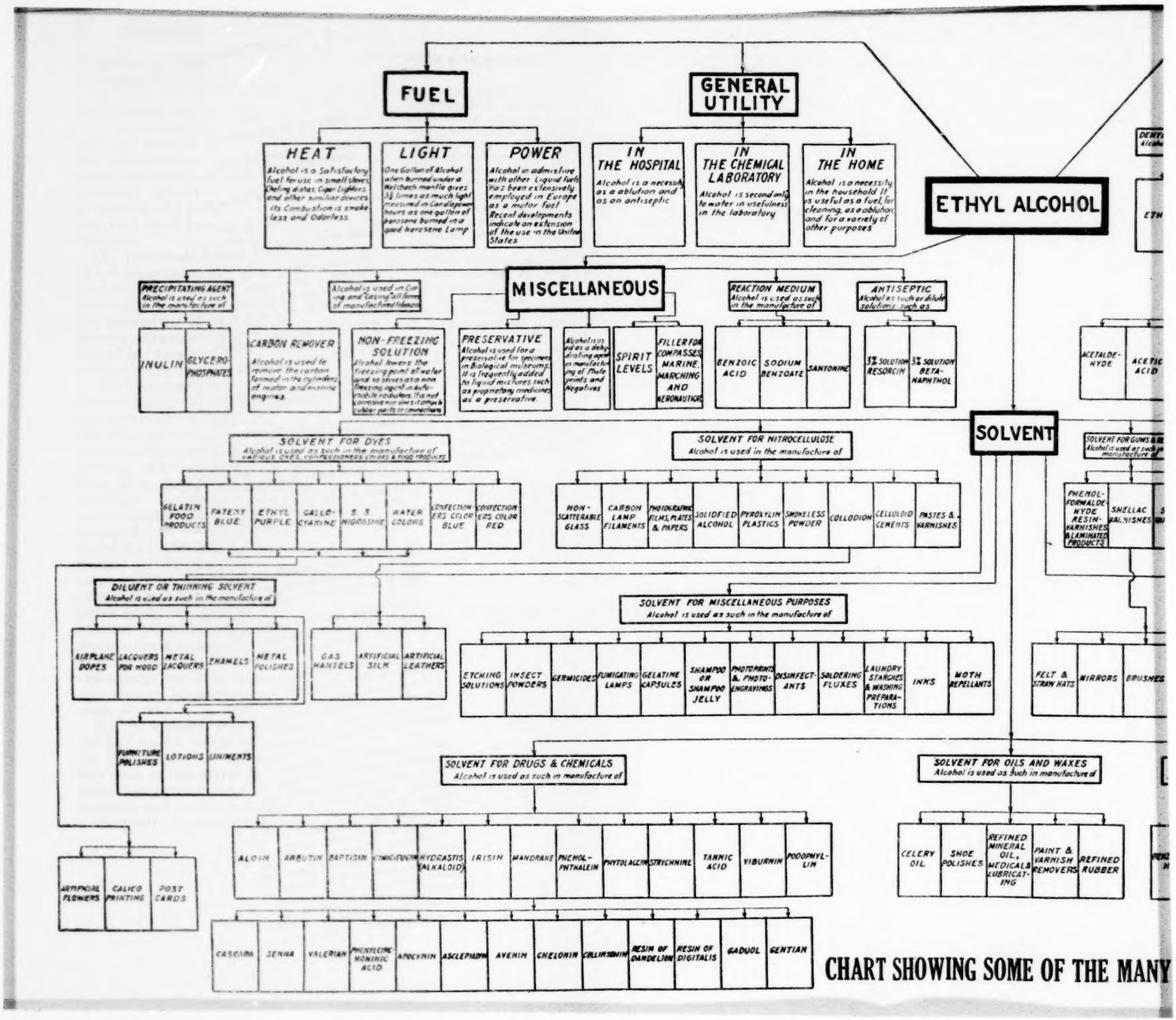
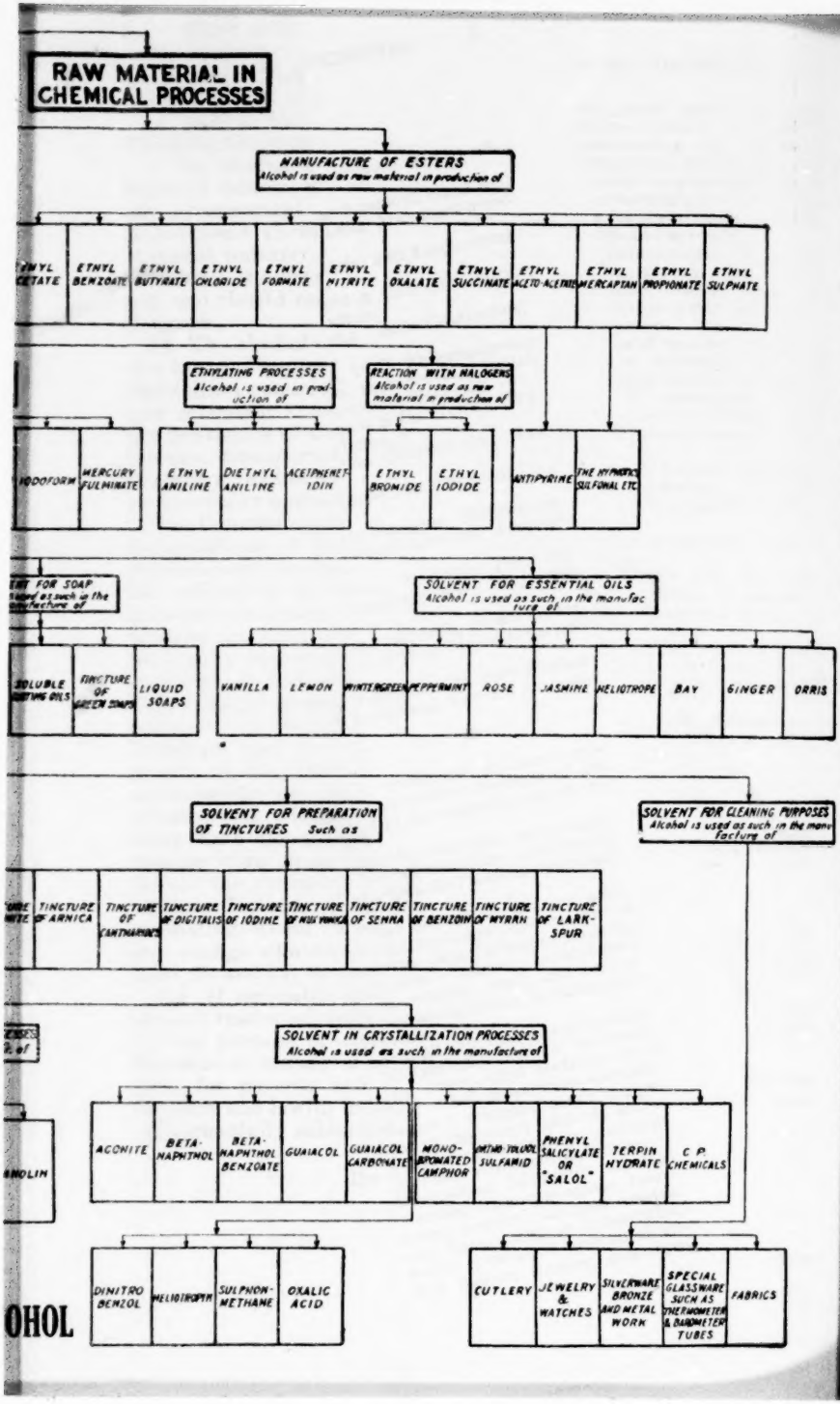

ETHYL ALCOHOL
FUEL
GENERAL UTILITY
HEAT
Alcohol is a Satisfactory fuel for use in small stoves, Chafing dishes, Cigar Lighters, and other similar devices. Its Combustion is smokeless and Odorless.
LIGHT
One Gallon of Alcohol when burned under a Welsbach mantle gives 3½ times as much light measured in Candlepower hours as one gallon of kerosene burned in a good kerosene Lamp
POWER
Alcohol in admixture with other Liquid fuels has been extensively employed in Europe as a motor fuel. Recent developments indicate an extension of the use in the United States
IN THE HOSPITAL
Alcohol is a necessity as a ablution and as an antiseptic
IN THE CHEMICAL LABORATORY
Alcohol is second only to water in usefulness in the laboratory
IN THE HOME
Alcohol is a necessity in the household It is useful as a fuel, for cleaning, as a ablution and for a variety of other purposes
MISCELLANEOUS
PRECIPITATING AGENT Alcohol is used as such in the manufacture of
INULIN
GLYCEROPHOSPHATES
CARBON REMOVER
Alcohol is used to remove the carbon formed in the cylinders of motor and steaming engines.
NON-FREEZING SOLUTION
Alcohol lowers the freezing point of water and so serves as a non Freezing agent in duly-proportioned radiators. It is not corrosive nor does it attack rubber parts in connections
PRESERVATIVE
Alcohol is used for a preservative for specimens in Biological museums. It is frequently added to liquid mixtures such as proprietary medicines as a preservative.
Alcohol is used as a dehydrating agent in manufacturing of Photo prints and Negatives
SPIRIT LEVELS
FILLER FOR COMPASSES MARINE, MARCHING AND AERONAUTICS
REACTION MEDIUM Alcohol is used as such in the manufacture of
BENZOIC ACID
SODIUM BENZOATE
SANTONINE
ANTISEPTIC Alcohol as such or dilute solutions such as
5% SOLUTION RESORCIN
3% SOLUTION BETA-NAPHTHOL
ACETALDEHYDE
ACETIC ACID
SOLVENT
SOLVENT FOR DYES Alcohol is used as such in the manufacture of various DYES, CONFECTIONERS COLORS & FOOD PRODUCTS
GELATIN FOOD PRODUCTS
PATENT BLUE
ETHYL PURPLE
GALLOCYANINE
S. S. NIGROSINE
WATER COLORS
CONFECTIONERS COLOR BLUE
CONFECTIONERS COLOR RED
SOLVENT FOR NITROCELLULOSE Alcohol is used in the manufacture of
NON-SCATTERABLE GLASS
CARBON LAMP FILAMENTS
PHOTOGRAPHIC FILMS, PLATES & PAPERS
SOLIDIFIED ALCOHOL
PYROXYLIN PLASTICS
SMOKELESS POWDER
COLLODION
CELLULOID CEMENTS
PASTES & VARNISHES
PHENOL-FORMALDEHYDE RESIN-VARNISHES & LAMINATED PRODUCTS
SHELLAC VARNISHES
DILUENT OR THINNING SOLVENT Alcohol is used as such in the manufacture of
AIRPLANE DOPES
LACQUERS FOR WOOD
METAL LACQUERS
ENAMELS
METAL POLISHES
FURNITURE POLISHES
LOTIONS
LINIMENTS
GAS MANTELS
ARTIFICIAL SILK
ARTIFICIAL LEATHERS
SOLVENT FOR MISCELLANEOUS PURPOSES Alcohol is used as such in the manufacture of
ETCHING SOLUTIONS
INSECT POWDERS
GERMICIDES
FUMIGATING LAMPS
GELATINE CAPSULES
SHAMPOO OR SHAMPOO JELLY
PHOTOPRINTS & PHOTO-ENGRAVINGS
DISINFECTANTS
SOLDERING FLUXES
LAUNDRY STARCHES & WASHING PREPARATIONS
INKS
MOTH REPELLANTS
FELT & STRAW HATS
MIRRORS
BRUSHES
SOLVENT FOR DRUGS & CHEMICALS Alcohol is used as such in manufacture of
ALOIN
ARBUTIN
BAPTISIN
CIMICIFUGIN
HYDRASTIS (ALKALOID)
IRISIN
MANDRAKE
PHENOLPHTHALEIN
PHYTOLACCIN
STRYCHNINE
TANNIC ACID
VIBURNIN
PODOPHYLLIN
CASCARA
SENNA
VALERIAN
PHENYLCINCHONINIC ACID
APOCYNIN
ASCLEPIADIN
AVENIN
CHELONIN
COLLINSONIN
RESIN OF DANDELION
RESIN OF DIGITALIS
GADUOL
GENTIAN
SOLVENT FOR OILS AND WAXES Alcohol is used as such in manufacture of
CELERY OIL
SHOE POLISHES
REFINED MINERAL OIL, MEDICAL & LUBRICATING
PAINT & VARNISH REMOVERS
REFINED RUBBER
ARTIFICIAL FLOWERS
CALICO PRINTING
POST CARDS

CHART SHOWING SOME OF THE MANY


RAW MATERIAL IN CHEMICAL PROCESSES
MANUFACTURE OF ESTERS
Alcohol is used as raw material in production of
ETHYL ACETATE
ETHYL BENZOATE
ETHYL BUTYRATE
ETHYL CHLORIDE
ETHYL FORMATE
ETHYL NITRITE
ETHYL OXALATE
ETHYL SUCCINATE
ETHYL ACETO-ACETATE
ETHYL MERCAPTAN
ETHYL PROPIONATE
ETHYL SULPHATE
ETHYLATING PROCESSES
Alcohol is used in production of
REACTION WITH HALOGENS
Alcohol is used as raw material in production of
IODOFORM
MERCURY FULMINATE
ETHYL ANILINE
DIETHYL ANILINE
ACETPHENETIDIN
ETHYL BROMIDE
ETHYL IODIDE
ANTIPYRINE
THE HYPNOTICS SULFONAL ETC.
SOLVENT FOR ESSENTIAL OILS
Alcohol is used as such in the manufacture of
SOLUBLE CUTTING OILS
TINCTURE OF GREEN SOAPS
LIQUID SOAPS
VANILLA
LEMON
WINTERGREEN
PEPPERMINT
ROSE
JASMINE
HELIOTROPE
BAY
GINGER
ORRIS
SOLVENT FOR PREPARATION OF TINCTURES Such as
SOLVENT FOR CLEANING PURPOSES
Alcohol is used as such in the manufacture of
TINCTURE OF ARNICA
TINCTURE OF CANTHARIDES
TINCTURE OF DIGITALIS
TINCTURE OF IODINE
TINCTURE OF NUX VOMICA
TINCTURE OF SENNA
TINCTURE OF BENZOIN
TINCTURE OF MYRRH
TINCTURE OF LARKSPUR
SOLVENT IN CRYSTALLIZATION PROCESSES
Alcohol is used as such in the manufacture of
ACONITE
BETA-NAPHTHOL
BETA-NAPHTHOL BENZOATE
GUAIACOL
GUAIACOL CARBONATE
MONO-BROMATED CAMPHOR
ORTHO TOLUOL SULFAMID
PHENYL SALICYLATE OR "SALOL"
TERPIN HYDRATE
C. P. CHEMICALS
DINITRO BENZOL
HELIOTROPIN
SULPHONMETHANE
OXALIC ACID
CUTLERY
JEWELRY & WATCHES
SILVERWARE BRONZE AND METAL WORK
SPECIAL GLASSWARE SUCH AS THERMOMETER & BAROMETER TUBES
FABRICS

Soap liniment (U. S. P.) and chloroform liniment (U. S. P.), liniment of soft soap and green soap, when made in accordance with the standards of the United States Pharmacopœia, with the exception that the products will contain camphor and oil of rosemary.

Aldehydes; glacial acetic acid.

Chemical and physical laboratory purposes; photo dry plates; manufacturing vegetable oils; varnish and white petroleum oils.

Tooth poste.

Meat-branding inks.

Incorporating certified color in food products, no alcohol to appear in the finished product when prepared for use.

Acetparamidophenolsalol and candy glaze.

Pectin.

Antiseptic solutions, for external purposes.

Mouth washes and dentifrices.

Barbers' alcoholic supply preparations.

Perfumes, toilet waters.

Bay rum.

Solid confections and lozenges.

Emulsions which contain no alcohol in the finished products.

Spirit varnishes, varnish removers, and similar preparations.

An antiseptic, sterlizing, and bathing alcohol for use exclusively by visiting nurse associations, public nursing associations, clinics, and dispensaries.

Some general scientific and industrial uses of alcohol are outlined in the following chart: